

# Modification of the framework applicable to IICILs and other regulatory changes applicable to CIIs

**Royal Decree 1180/2023**, of December 2, introduces flexibility to the framework applicable to IICILs (*Instituciones de Inversión Colectiva de Inversión Libre/Free Investment Funds*) and modifies other aspects of the regulations applicable to collective investment institutions (CIIs).

Legal flash

December 29, 2023



## Key developments

- > **IICIL marketing framework.** The marketing of IICILs is made more flexible, even allowing retail investors to access illiquid CIIs or those channeling credit strategies.
- > **Possibility of reducing the minimum investment requirements for clients that have entered an advisory agreement.** The minimum investment for retail investors that have signed an advisory agreement is reduced in line with the provisions of the private equity regulations.
- > **Marketing of IICILs to employees of the Management Company or to investors with relevant management or advisory experience.** Also, in line with the provisions of the private equity regulations, the marketing of IICILs to these groups had been made more flexible.
- > **Gates framework.** The "gates" framework is improved by eliminating the obligation to grant the redemption in the following gate.
- > **Modification of the framework applicable to fees.** Changes are introduced in the collection of success fees in line with the latest ESMA criteria. Furthermore, the system for the collection of custody fees is made more flexible.



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## Introduction

Last December 28, 2023, [Royal Decree 1180/2023](#), of December 27, 2023, was published in the Official Gazette of the Spanish State (BOE), which amends Royal Decree 948/2001, of August 3, on investor compensation systems, and the implementing regulation of Law 35/2003, of November 4, on collective investment institutions, approved by Royal Decree 1082/2012, of July 13. The new Royal Decree introduces highly significant developments, particularly in the framework applicable to IICILs, which will undoubtedly give an important boost to this vehicle.

This Legal Flash contains the **main modifications**.

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## Marketing framework applicable to IICILs

The modification of Article 73 of the Collective Investment Institution Regulation includes highly significant developments in the marketing of IICILs. Before the modification, illiquid IICILs—i.e. those with a lock-up period of more than one year and those channeling credit strategies—could only be marketed to professional investors.

With the introduction of RD 1180/2023, this restriction is eliminated so that any IICIL, whether liquid or illiquid and regardless of whether or not it has a lock-up period, can be marketed to retail investors who invest at least 100,000 euros in it.

Additionally, for those retail investors who make their investment following a personalized recommendation from an intermediary who provides them with an advisory service—provided that their financial assets do not exceed 500,000 euros—the minimum investment is reduced to 10,000 euros, but may not represent more than 10% of such assets. If the financial assets exceed 500,000 euros, there will be no minimum investment.<sup>1</sup>

Shares or units in IICILs may also be marketed—without the need to comply with the minimum investment requirements—to the directors, managers or employees of the management company or self-managed entities, with respect to the entity itself or to those managed or advised by the management company. They may also be marketed to any investors who can prove that they have experience in the management or provision of advice in IICILs similar to the one in which they intend to invest.

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<sup>1</sup> This change, based on ELTIF 1.0 regulation, brings the framework applicable to the marketing of IICILs into line with that of Spanish private equity firms.

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## Gates framework in IICILs

Prior to the approval of RD 1180/2023, the possibility of limiting the liquidity gates could only be applied in the case of a redemption request, in such a way that, in practice, it made the operation unusable, given that the unitholder had the right to receive the full amount of its redemption in the following NAV calculation period. After the elimination of this obligation, the gates can be maintained without limit, subject only to the assessment of liquidity in the IICIL, thereby allowing an adequate liquidity management.

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## New developments in the fees framework applicable to CIIs

RD 1180/2023 eliminates the restriction that prevented distributors at the management companies' group from charging custody fees when operating with omnibus accounts. With the new regulation, distributors will not be restricted in charging such fees, even if the CIIs are managed by management companies of their group.

On the other hand, to align them with ESMA criteria, the framework applicable to success fees is modified to increase from 3 to 5 years the verification period of "watermarks", including an express mention of the cumulative nature of such calculation (*rolling basis*).

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## Other new developments included in the Royal Decree

The framework applicable to side pockets is modified, by reducing the percentage for access to these structures from 5% to 1% and eliminating the possibility for these vehicles to be in the form of a company. Likewise, limits are established on the fees.

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For additional information, please contact our specialist lawyers [Jorge Canta](#) or [Paz Irazusta](#) or your regular contact person at Cuatrecasas.

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